

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

57055

FILE: B-184753

DATE: September 25, 1975

MATTER OF: Pittsfield Construction, Inc.

97411

DIGEST:

Contract awarded with knowledge of mistake in bid alleged prior to award may be reformed to reflect upward price adjustment in amount of error where award was made subject to final determination of mistake in bid claim and contractor's evidence leaves no substantial doubt as to existence and nature of mistake and amount of intended bid.

The Department of Agriculture has forwarded for our consideration a claim of mistake in bid submitted by Pittsfield Construction, Inc. (Pittsfield), prior to award of contract under United States Forest Service (USFS) solicitation No. R9-75-16, issued on May 8, 1975.

The solicitation requested bids for the construction of three bridges in the Allegheny National Forest and Elk County, Pennsylvania. Bids were opened on June 9, 1975, and Pittsfield was the apparent low bidder. However, because of the sizable variance among the Government's estimate, Pittsfield's bid and the bid of the next lowest bidder, Pittsfield was requested to verify its bid. In response, Pittsfield alleged an error in its bid on item 202(05), of the solicitation, removal of the bridge deck from the Gilfoyle Run Bridge. In connection with its claim, Pittsfield submitted copies of its working papers purporting to show that it intended to bid \$5,000 for this item in lieu of the \$500 reflected in its original bid materials. The contracting officer determined that time would not permit processing the claim of mistake and the contract was awarded to Pittsfield on June 27, 1975, subject to a final determination on the claim of mistake. The Department concurs in the contracting officer's recommendation that correction be authorized.

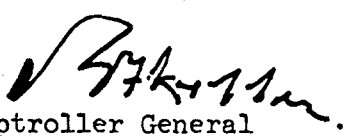
Generally, acceptance of a bid by the Government with actual or constructive knowledge of an error in the bid does not result in a binding contract. 52 Comp. Gen. 837 (1973); 45 Comp. Gen. 700 (1966). Here, the mistake was brought to the attention of the

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contracting officer prior to award. In such circumstances, we have held that the contract may be subject to reformation so as to reflect the actual intent of the parties. 49 Comp. Gen. 446 (1970). Where there is notice of an alleged error prior to award, there are basically three conditions which must be satisfied for reformation to be proper: (1) Award of the contract must have been subject to reservation by the contractor of the right to seek an adjustment in the contract price on the basis of the alleged error; (2) the contractor must be able to show by clear and convincing evidence the existence and nature of the mistake and (3) the amount of the intended bid. Thus, we have denied reformation where the contractor failed to reserve the right to seek an adjustment, Sherkade Construction Corp., B-180681, October 30, 1974, 74-2 CPD 231, or where sufficient evidence of the intended bid is lacking, Fortec Constructors, B-179204, May 24, 1974, 74-1 CPD 285. Conversely, reformation has been granted where all three requirements have been met. See Robert E. McKee, Inc., B-181872, November 5, 1974, 74-2 CPD 237.

We think that Pittsfield has satisfied the prerequisites for reformation in this case. As noted above, award of the contract was made subject to final determination of Pittsfield's claim of mistake and we find that the evidence submitted by the contractor in support of its claim, while not overwhelming, leaves no substantial doubt as to either the nature of the error or the actual bid intended.

Accordingly, Pittsfield's contract may be reformed to reflect an upward price adjustment in the amount of \$4,500.


Deputy Comptroller General
of the United States